R OPY 475

THE FOREIGN SERVICE

OF THE

UNITED STATES OF AMERICA

DEPARTMENT OF STATE A/CDC/MR
REVIEWED: Jettaway 3/19/82
E.O. 12356 SEC. 3.4
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Address Official Communications To
American Embassy,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director, Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau
Mr. Masao OSATO, Chief, Fourth Section, Treaties Bureau

For the American Embassy, Tokyo:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the Ministry of Foreign Affairs, Tokyo, Japan.

Date: Tuesday, May 6, 1952 NINETEENTH INFORMAL MEETING

ARTICLE VII
(Additional Discussion)

Mr. Yukawa asked for clarification of a point in Article VII of the standard draft, although the Japanese side, he added, had already submitted a proposal for a revised Article VII. He stated that the first sentence of paragraph 1, Article VII specified that national treatment would be accorded with respect to business activities. This is followed by a second sentence stating that "Accordingly, such nationals and companies shall be permitted....(b) to organize companies under the general company laws of such other Party, and to acquire majority interests in companies of such other party....". Mr. Yukawa added that paragraph 4 of the same Article further stipulates that most-favored-nation treatment is to be accorded with reference to the matters treated in this Article. It appeared therefore that the right

to organize companies was to be granted on a most-favored-nation basis, since the national treatment concept contained in the first sentence of paragraph 1 apparently did not extend to the matters covered in the second sentence of that same paragraph.

Mr. Yukawa added, in substantiation of his interpretation that the right to organize companies is to be accorded on a most-favored-nation rather than on a national treatment basis, that paragraph 2 (c), Article VII of the United States FCN Treaty with Colombia clearly states that the right to organize, participate in and operate companies is to be accorded on a most-favored-nation treatment basis. Mr. Yukawa asked if the principles involved in the Treaty with Colombia and in the standard draft were similar in this respect.

Mr. Bassin replied that the Department of State considers the two Articles under discussion alike, but that it believes that the standard draft formula is clearer. He added that it appeared that most-favored-nation treatment was to be accorded with respect to the right to organize companies.

Mr. Otabe stated that if most-favored-nation treatment was intended in the standard draft, as in the Treaty with Colombia, the construction of paragraph 1, Article VII of the standard draft required clarification. He stated that the right to organize companies "under the general company laws of the other Party" implied national treatment, since there was no qualifying statement to the effect that other regulations or restrictions concerning alien ownership might exist. Mr. Otabe proposed therefore that paragraph 1 (b), Article VII, be rephrased either to clarify that most-favored-nation treatment was intended, or alternatively, that the phrase "general company laws" be so qualified as to acknowledge the existence of certain permissible restrictions on alien ownership, thus clearly indicating that full national treatment would not necessarily be accorded.

Mr. Adams replied that the Department of State would be requested for clarification as to whether national or most-favored-nation treatment was intended, and that the suggestions made by Mr. Otabe would be relayed to the Department for consideration of some appropriate qualifying phrase, if necessary.

Mr. Singer added that, in his opinion, the right to organize companies should be accorded on a basis as near that of national treatment as possible, although less than national treatment might be granted in some cases. He pointed out that once a company was so organized by nationals of the other Party, their activities would be governed strictly on a national treatment basis, as indicated by the third sentence of paragraph 1, Article VII.

Mr. Otabe then referred to paragraph 1 (c), Article VII of the standard draft (permitting nationals of either Party to control and manage enterprises which they have established or acquired) and to paragraph 1, Article VIII of the Treaty with Colombia (according

nationals of either Party the right to control and manage enterprises which they have been permitted to establish or acquire). He asked whether there was any difference in substance between these two paragraphs, and also for information concerning the precise standard of treatment (national or most-favored-nation) intended in this connection.

Mr. Adams replied that the paragraphs of the two treaties under discussion were identical in this respect, and referred to Mr. Singer's previous statement to the effect that, once a company was organized or acquired, national treatment was intended in connection with its activities, control and management.

Mr. Yukawa then stated that paragraph 1 (a), Article VII of the standard draft permits nationals of either Party to establish and maintain branches, agencies, et cetera, appropriate to the conduct of their business. He added that the last sentence of paragraph 2 restates the right to maintain branches and agencies to perform functions necessary for essentially international operations in which transportation, communications and banking firms are permitted to engage. Since the right has already been granted in paragraph 1 (a), Mr. Yukawa added, clarification as to the need for its repetition in paragraph 2 was requested.

Mr. Adams replied that the three types of business firms mentioned by Mr. Yukawa were among those fields of activity covered by the reservation made in the first sentence, paragraph 2. Having established this reservation, the question would arise in the minds of businessmen whether agencies or branch offices of these particular types would be permitted. Thus, he added, the latter part of paragraph 2 modifies the initial general reservation, by excepting the establishment of branches or agencies for the specified international business activities.

Mr. Mori replied that the need for repeating this right with respect to transportation and communications companies was clear, since a sweeping reservation had been made earlier in the same paragraph. With reference to banking, however, on a partial reservation had been made, and this was for activities not coming within the scope of international operations. Therefore, added Mr. Mori, a bank engaged in activities other than depository or fiduciary functions was already authorized to establish a branch under the terms of paragraph 1, and the additional mention in the latter part of paragraph 2 was unnecessary.

Mr. Singer replied that he believed Mr. Mori to be correct in his analysis, but added that a reiteration of this right with respect to banks would clarify this question for businessmen interested in the Treaty. He said that if banking were deleted from the latter part of paragraph 2, some confusion would arise because of the partial reservation made earlier in the same paragraph; although a treaty expert would reason this problem out along the lines indicated by Mr. Mori, the average businessman would find it most helpful if specific mention of banking were again made in the latter part of paragraph 2.

Mr. Yukawa stated that its reiteration in paragraph 2 was not objectionable to the Japanese side, and that it might assist the average businessman in understanding the Treaty.

Mr. Otabe then asked for a clarification of the term "in which they are permitted to engage", as used in the latter part of paragraph 2. He inquired specifically if this phrase is intended to mean that either Party may refuse to extend such permission.

Mr. Bassin replied that the permit to engage in certain operations is already inherent in the Treaty, and is contained generally in paragraph 1, Article VII. This phrase therefore does not contemplate the right of either Party to refuse to extend such permission. Such permission, he added, is a treaty right, and one should look for such permission not only in Article VII, but also in other Articles of the present Treaty, as well as in other appropriate instruments (e.g., a civil air transportation agreement). Mr. Bassin added that the right to refuse permission for such activities arose only to the extent that the reservations in paragraph 2, Article VII, were encroached upon.

ARTICLE IV
(Additional Discussion)

Mr. Adams referred to a previous discussion (second informal meeting, February 27, 1952) concerning the Japanese social security system, and stated that, while it was his understanding that the workmen's compensation and social security systems of Japan and the United States were similar despite some technical points of difference, a question had arisen as to the Japanese social security system in general. Mr. Adams asked if it could be clarified whether Japan's social security system was generally of the compulsory insurance type.

Mr. Otabe replied that, as previously indicated, while the National Health Insurance system was not compulsory, other systems of workmen's compensation and social security were compulsory in nature. Among the compulsory insurance systems were those covered by (a) the Laborer's Accident Compensation Insurance Law (Law No. 50 of 1947), under which employers were insured against the liability to compensate for accidents due to work incurred by employees who could receive compensation either from the employers or directly from this insurance in case of hospitalization and medical care; (b) the Welfare Pension Insurance Law (Law No. 60 of 1941), which provides for insurance benefits in the case of old age, disability, death or withdrawal of employees or ex-employees of enterprises in certain fields of activities; (c) the Health Insurance Law (Law No. 70 of 1922), which provides for the payment of benefits in case of sickness, injury or death not due to work, or of child-birth to employees in enterprises similar to those of (b) above; (d) the Seamen's Insurance Law (Law No. 73 of 1937), which provides for the payment of benefits for seamen's accidents both due to work and not due to work; and (e) the Unemployment Insurance Law (Law No. 146 of 1947), which provides for unemployment compensation for employees of enterprises excepting agriculture and other non-profit businesses. Apart

from the Insurance Systems as mentioned above, the Labor Standards Law and Mariner's Law assure employees and mariners compensation for accidents due to work, the liability for which is insured by the Insurance Systems of (a) and (b), above, respectively.

It was then agreed that the next informal meeting would be held on May 8, 1952.

/s/ M. Yukawa

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/s/ Frank A. Waring

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